

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
CHAD DANIEL TERRY JR.**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD78345

DATE: July 12, 2016

Appeal From:

Jackson County Circuit Court
The Honorable James F. Kanatzar, Judge

Appellate Judges:

Special Division: Zel M. Fischer, Special Judge, Presiding, Mark D. Pfeiffer, Judge and Gary D. Witt, Judge

Attorneys:

Nathan J. Aquino, Jefferson City, MO, for respondent.

Ellen H. Flottman, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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STATE OF MISSOURI,

RESPONDENT,

v.

CHAD DANIEL TERRY JR.,

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No. WD78345

Jackson County

Before Special Division: Zel M. Fischer, Special Judge, Presiding, Mark D. Pfeiffer, Judge and Gary D. Witt, Judge

Appellant Chad Terry ("Terry") was convicted by the Circuit Court of Jackson County of first degree murder and armed criminal action for the murder of Erik Schwartz. Terry appeals his conviction raising five points of error: (1) insufficient evidence to prove deliberation; (2) his confession was obtained in violation of *Miranda*; (3) his confession was obtained by threat; (4) the court should have declared a mistrial when two jurors saw him in the courthouse in shackles; and (5) the prosecution impermissibly referred to Terry's decision not to testify in his own defense.

AFFIRMED

Special Division holds:

- (1) The trial court did not error in overruling the defense's motion for acquittal because there was insufficient evidence to find that Terry deliberated before shooting Schwartz. There were multiple facts upon which the jury could have relied to find deliberation. Terry brought a gun to the robbery, hit Schwartz twice before shooting him, incapacitated Schwartz before shooting him, and Terry fled from the scene. Any one of the facts would be sufficient for a fact finder to find deliberation.
- (2) The trial court did not error in admitting Terry's confession because his *Miranda* rights were not violated. Terry was read his *Miranda* rights. Following his arrest and confinement at a detention center, Terry invoked his right to remain silent and was asked no further questions. When formal charges were filed, an officer read those charges to Terry at which time Terry volunteered that he wished to speak with detectives. He was re-read his *Miranda* rights and voluntarily waived them prior to questioning. The reading of the formal charges, with no further action did not constitute questioning in violation of *Miranda*.

- (3) The trial court did not error in admitting Terry's confession in violation of Terry's *Miranda* rights. Terry's restraint in a chair immediately prior to his confession did not render his statement involuntary. After requesting to waive his *Miranda* rights, but prior to being questioned, Terry became out of control necessitating restraint in a chair. Officers did not threaten him with the restraint chair in exchange for a confession or a waiver of rights. Officer's statement that he would be re-cuffed Terry if he lost composure was not a "threat."
- (4) The trial court did not error in denying Terry's motion for a mistrial after Terry alleged that two jurors saw him shackled and in an orange jumpsuit in the hallway of the courthouse. There was no evidence that such an event actually took place. Further, a brief and inadvertent exposure during transport does not necessarily deprive a defendant of a fair trial.
- (5) The trial court did not err in overruling the defense's objection to the State's closing argument when the State allegedly referenced Terry's decision not to testify at trial. The State's argument did not actually reference Terry's decision not to testify and, following the objection, the State clarified that the reference was to Terry's statement given to police.

Opinion by Gary D. Witt, Judge

July 12, 2016

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